

**UNITED STATES DISTRICT COURT  
DISTRICT OF PUERTO RICO**

In re:

THE FINANCIAL OVERSIGHT AND  
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO, *et al.*,

Debtors.<sup>1</sup>

PROMESA

Title III

No. 17 BK 3283-LTS

(Jointly Administered)

PROMESA

Title III

In re:

THE FINANCIAL OVERSIGHT AND  
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

PUERTO RICO ELECTRIC POWER AUTHORITY  
("PREPA"),

Debtor.

No. 17 BK 4780-LTS

**This Motion relates to PREPA  
and shall be filed in Lead Case  
No. 17 BK 3283-LTS and Case  
No. 17 BK 4780-LTS.**

**Re: ECF No. 2417**

**URGENT MOTION OF THE GOVERNMENT PARTIES  
REGARDING THE SCHEDULING OF DEADLINES AND BRIEFING  
IN CONNECTION WITH THE GOVERNMENT PARTIES' MOTION  
FOR ORDER ALLOWING ADMINISTRATIVE EXPENSE CLAIM FOR  
AMOUNTS TO BE PAID TO LUMA ENERGY BY PREPA DURING INTERIM  
PERIOD UNDER SUPPLEMENTAL AGREEMENT AND THE T&D CONTRACT**

<sup>1</sup> The Debtors in these Title III Cases, along with each Debtor's respective Title III case number and the last four (4) digits of each Debtor's federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico ("Commonwealth") (Bankruptcy Case No. 17-BK-3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation ("COFINA") (Bankruptcy Case No. 17-BK-3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority ("HTA") (Bankruptcy Case No. 17-BK-3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico ("ERS") (Bankruptcy Case No. 17-BK-3566-LTS) (Last Four Digits of Federal Tax ID: 9686); (v) Puerto Rico Electric Power Authority ("PREPA") (Bankruptcy Case No. 17-BK-4780-LTS) (Last Four Digits of Federal Tax ID: 3747); and (vi) Puerto Rico Public Buildings Authority ("PBA") (Bankruptcy Case No. 19-BK-5523-LTS) (Last Four Digits of Federal Tax ID: 3801) (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations).

To the Honorable United States District Court Judge Laura Taylor Swain:

The Puerto Rico Electric Power Authority (“PREPA”), by and through the Financial Oversight and Management Board for Puerto Rico (the “Oversight Board”), as PREPA’s representative pursuant to section 315(b) of the Puerto Rico Oversight, Management, and Economic Stability Act (“PROMESA”),<sup>2</sup> and the Puerto Rico Fiscal Agency and Financial Advisory Authority (“AAFAF”) as PREPA’s representative pursuant to Act 2-2017, have sought relief in the form of the *Government Parties’ Motion for Order Allowing Administrative Expense Claim for Amounts to Be Paid to LUMA Energy By PREPA During Interim Period Under Supplemental Agreement and the T&D Contract* [ECF No. 2417] (the “Administrative Expense Motion”), and, to that end, hereby respectfully submit this motion (the “Urgent Motion”) seeking entry of an order, substantially in the form attached hereto as **Exhibit A** (the “Proposed Order”), establishing a briefing schedule and hearing date for the Administrative Expense Motion to ensure it can be heard sufficiently in advance of the targeted June 1, 2021 commencement of LUMA Energy’s operation and management of PREPA’s T&D System.<sup>3</sup> In support of this Urgent Motion, FOMB and AAFAF (collectively, the “Government Parties”) state as follows:

### **PRELIMINARY STATEMENT**

1. The purpose of this Urgent Motion is to establish a schedule for briefing on the Administrative Expense Motion that provides ample time for parties-in-interest to evaluate and file any responses to the motion while also maintaining the targeted April 28, 2021 hearing date to coincide with the next Omnibus Hearing.

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<sup>2</sup> PROMESA is codified at 48 U.S.C. §§ 2101–2241.

<sup>3</sup> Capitalized terms used but not otherwise defined herein shall have the meaning given to them in the Administrative Expense Motion.

2. PREPA and LUMA Energy are parties to the T&D Contract, which provides that LUMA Energy will assume responsibility for day-to-day management of PREPA's T&D System. LUMA Energy has invested considerable time and resources to prepare itself to assume operations and revitalize the T&D System. That process, the Front End Transition Period (as defined below), is expected to be completed by June 1, 2021. LUMA Energy will then be positioned to provide the O&M Services—the benefits of which are discussed extensively in the Administrative Expense Motion—under a supplemental agreement governing the commencement of O&M Services prior to plan confirmation (the “Interim Period”).

3. Significantly, a precondition to the commencement of the Interim Period is that any amounts required to be paid by PREPA during the Interim Period (the “Interim Obligations”) have administrative expense priority. Supplemental Agreement. §§ 2.3(b), 3.5.

4. Any delay in obtaining such order could delay commencement of the O&M Services. Accordingly, the Government Parties propose a briefing schedule to ensure that the motion is heard promptly at the next Omnibus Hearing and is not delayed. In furtherance of that goal, the Government Parties propose a schedule that provides potential objectors more than double the allotted time under the Case Management Procedures to file a response to accommodate the interests of potential objectors and the Court. The Government Parties submit such schedule is more than fair, particularly in light of the Government Parties' interest in ensuring the substantial progress on PREPA's transformation remains uninterrupted.

### **JURISDICTION AND VENUE**

5. The United States District Court for the District of Puerto Rico (the “Court”) has subject matter jurisdiction over this Motion pursuant to PROMESA section 306(a).

6. Venue is proper in this district pursuant to PROMESA section 307(a).

7. The statutory predicates for the relief sought herein are Bankruptcy Code § 105(a) and Bankruptcy Rule 9006, made applicable to these Title III cases by PROMESA §§ 301(a) and 310, Rule 9013-1 of the Local Bankruptcy Rules for the United States Bankruptcy Court for the District of Puerto Rico and the *Fourteenth Amended Notice, Case Management and Administrative Procedures*, [Case No. 17-03283-LTS, ECF No. 15894] (the “Case Management Procedures”).

### **BACKGROUND**<sup>4</sup>

8. The Government of Puerto Rico and the Oversight Board have long been aligned in their pursuit of a complete revitalization and transformation of PREPA’s aging and outdated transmission and distribution system (the “T&D System”). *See* Puerto Rico Electric Power System Transformation Act, Act No. 120-2018 (“Act 120-2018”), Statement of Motives; 2020 Fiscal Plan for the Puerto Rico Electric Power Authority (Jun. 29, 2020) (“PREPA 2020 Fiscal Plan”);<sup>5</sup> *see also* Puerto Rico Energy Public Policy Act, Act 17-2019 (requiring the unbundling of the electric system through the transfer of operation and maintenance responsibilities of PREPA’s transmission, distribution and generation assets to private operators).

9. As part of the transformation process, PREPA, the Puerto Rico Public-Private Partnerships Authority (the “P3 Authority”), and LUMA Energy, LLC and LUMA Energy ServCo, LLC (together, “LUMA Energy”) entered into the Puerto Rico Transmission and Distribution System Operation and Maintenance Agreement, dated June 22, 2020, as approved by the Board of Directors of the P3 Authority, the PREPA Governing Board, and the Government of Puerto Rico,

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<sup>4</sup> A complete background of PREPA’s historical operational and management challenges, the T&D transformation process, the selection and approval of LUMA Energy and the T&D Contract, can be found in the Administrative Expense Motion pages 6-16. This abbreviated background is repeated here for ease of reference.

<sup>5</sup> Available at <https://drive.google.com/file/d/1paRgy0dJBkUH4-5eev7z2SuR0diil8g9/view>

pursuant to the procedures set forth in the Puerto Rico Private -Public Partnerships Act, Act No. 29-2009 (as amended, “Act 29-2009”), as supplemented (the “T&D Contract”).

10. The T&D Contract contemplates a phased approach to ensure an orderly transition of the responsibility for the management, operation, maintenance, repairs, restoration and replacement of the T&D System beginning with an initial twelve-month period (the “Front-End Transition Period”) that commenced on June 22, 2020. A provision of the T&D Contract required PREPA to seek administrative expense priority for fees related to the Front-End Transition Period, and afforded LUMA Energy the right to terminate the T&D Contract if an order granting administrative expense priority was not entered within 90 days after filing, subject to a 45-day extension by the P3 Authority. *See* T&D Contract Section 4.1(c)(i). Accordingly, on July 7, 2020 the Government Parties filed *PREPA’s Motion for Entry of an Order Allowing Administrative Expense Claim for Compensation for Front-End Transition Services Under Puerto Rico Transmission and Distribution System Operation and Maintenance Agreement with LUMA Energy* (the “Front-End Administrative Expense Motion”) [ECF No. 2053].

11. Numerous parties objected to the Front-End Administrative Expense Motion. *See* ECF Nos. 2128, 2132–2134, and 2138. In addition, several parties sought discovery in connection with briefing on the Front-End Administrative Expense Motion. The Government Parties produced approximately 7,800 pages of documents, and the Court denied all discovery requests following briefing. *See Order on Discovery* at 3–4 [ECF Entry No. 2140] (the “Discovery Opinion”). The Front-End Administrative Expense Motion was heard at the September 16, 2020 Omnibus Hearing.

12. On October 19, 2020, the Court entered the *Memorandum Opinion Granting in Part and Denying in Part PREPA’s Motion for Entry of an Order Allowing Administrative Expense*

*Claim for Compensation for Front-End Transition Services Under Puerto Rico Transmission and Distribution System Operation and Maintenance Agreement with LUMA Energy* (the “Front-End Administrative Expense Opinion”) [ECF No. 2258] allowing an administrative expense claim in favor of LUMA Energy for the Front-End Transition Obligations (except late fees).

13. After almost a year of diligent efforts, LUMA Energy is now nearing successful completion of the Front-End Transition Services and has targeted June 1, 2021 as the date it will begin performing all operational and management services with respect to the T&D System on an interim basis.

14. Pursuant to section 2.3(b) of the Supplemental Agreement, the Government Parties must first obtain the relief sought in the Administrative Expense Motion before the Interim Period can commence. The T&D Contract, including the Supplemental Agreement, is a public document,<sup>6</sup> as are all of the supporting documents, and the fact that the Government Parties would be bringing the Administrative Expense Motion has been known to all parties in interest for many months.<sup>7</sup>

### **RELIEF REQUESTED**

15. The Court’s timely ruling on the Administrative Expense Motion will be critical to the continued progress of transformation of the T&D System and LUMA Energy’s commencement of O&M Services. Therefore, the Government Parties request that the Court set the following briefing schedule in relation to the Administrative Expense Motion, which was filed contemporaneously herewith:

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<sup>6</sup> Available at <https://aafaf.pr.gov/p3/wp-content/uploads/2020/06/executed-consolidated-om-agreement-td.pdf>.

<sup>7</sup> See Front-End Administrative Expense Opinion at 22 (noting that “the Supplemental Agreement contemplates separate motion practice seeking administrative expense treatment for amounts that become due under the Supplemental Agreement”).

- The deadline for parties to file any opposition or response to the Administrative Expense Motion shall be **Monday, April 12, 2021, by 12:00 p.m. (AST)**;
- The deadline for the Oversight Board and any other party to file a reply to all oppositions and responses shall be **Wednesday, April 21, 2021**.
- The hearing on the Administrative Expense Motion shall be held on **April 28, 2021**.

### **BASIS FOR RELIEF**

16. LUMA Energy's commencement of the O&M Services is a critical milestone to transformation of PREPA's T&D System.<sup>8</sup> For that phase to begin, the Supplemental Agreement requires the Government Parties to obtain the relief requested in the Administrative Expense Motion. Accordingly, to ensure the considerable progress made to-date on transformation may proceed uninterrupted, the Government Parties request the Court exercise its discretion in managing the matters before it to set the Proposed Briefing Schedule. *See Order Denying the Official Committee of Unsecured Creditors' Motion to Terminate Rule 9019 Motion* [ECF No. 2258] at 3 (identifying that every court has inherent authority "to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.") (quoting *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936)).

17. The proposed schedule contemplates a timeline for motion practice that will not prejudice any party that wishes to file an objection or response to the Motion. To the contrary, the proposed schedule actually benefits potential objectors. The Government Parties filed the Motion 11 days ahead of the deadline set forth in the Case Management Procedures. *See Case Management Procedures* § III.G. The Government Parties' proposed schedule provides more than double the time required by the Case Management Procedures for the filing of any responses. *See Case Management Procedures id.* at § III.I. The Government Parties ask that the Administrative

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<sup>8</sup> *See Declaration of Omar J. Marrero*, dated July 7, 2020 [ECF No. 2053-2] (the "Marrero Declaration") ¶ 10-11.

Expense Motion be heard at the April 28, 2021 omnibus hearing because the next omnibus hearing is scheduled for June 16, 2021, which is after the June 1, 2021 target date for commencement of full O&M Services by LUMA Energy. Scheduling this hearing to coincide with an omnibus hearing will promote efficiency and conserve the resources of the parties and the Court.

18. Parties in interest have been on notice of the Administrative Expense Motion and the associated motion practice. *See* Front-End Administrative Expense Opinion at 22 (noting that “the Supplemental Agreement contemplates separate motion practice seeking administrative expense treatment for amounts that become due under the Supplemental Agreement”). Potential Objectors have already reviewed and raised factual issues relating to the T&D Contract, and briefed and considered legal issues relating to the Court’s ability to allow administrative expenses under section 503(b)(1)(A) in relation to the Front-End Administrative Expense Motion.

19. The timing of the motion practice in connection with the Front-End Administrative Expense Motion, which contained a similar request for relief under the same T&D Contract, further demonstrates the fairness of the Proposed Briefing Schedule. There, the Court determined that additional discovery was unnecessary for efficient motion practice and determination of the narrow issue before the Court in connection with a motion seeking administrative expense treatment for fees under the T&D Contract. *See Order on Discovery* at 10–11. The Court also determined that the Front-End Administrative Expense Motion did not require an evidentiary hearing or the presentation of evidence through expert testimony as the Marrero Declaration was sufficient to support the Court’s determination whether costs incurred and payable under the T&D Contract would benefit PREPA. *See* Front-End Administrative Expense Opinion at 19–20. Given the discovery already made available in connection with the Front-End Administrative Expense

Motion as well as the narrow issue before the Court, there is no need for further discovery or an evidentiary hearing in connection with the Administrative Expense Motion.

20. Conversely, the Government Parties and PREPA would be prejudiced by an extended briefing schedule as it would delay LUMA Energy's progress on transformation of the T&D System. Under the T&D Contract, LUMA Energy cannot perform any O&M Services during the Front-End Transition Period. The sooner LUMA Energy can begin work as operator and commence performing the O&M Services, the sooner it can begin work to harden PREPA's T&D System and begin implementing long-anticipated and much-needed improvements, which are of critical importance heading into the Atlantic hurricane season which officially begins on June 1.

21. Given the comparative hardships to PREPA and the efforts taken by the Government Parties to ensure sufficient time for resolution of the Administrative Expense Motion, the Proposed Briefing Schedule presents a fair and equitable path forward for all parties.

### **CONCLUSION**

22. For the foregoing reasons, the Government Parties respectfully request that the Court (i) grant the Urgent Motion, and (ii) set the briefing schedule in the Proposed Order for dispositive motion practice on the Motion.

### **Certification in Compliance with the Case Management Procedures and Local Rule 9013-1**

23. Pursuant to Local Rule 9013-1 and section I.H of the Case Management Procedures, the Government Parties hereby certify that they have (a) carefully examined the matter and concluded that there is a true need for urgent relief; (b) not created the urgency through any lack of due diligence; (c) made a bona fide effort to resolve the matter without a hearing; and

(d) made reasonable, good-faith communications in an effort to resolve or narrow the issues that are being brought to the Court.

*[Remainder of Page Intentionally Left Blank]*

WHEREFORE the Government Parties respectfully request the Court enter the Proposed Order (a) granting the Motion, and (b) granting such other relief as is just and proper.

Dated: March 26, 2021  
San Juan, Puerto Rico

Respectfully submitted,

/s/ Martin J. Bienenstock

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**CERTIFICATE OF SERVICE**

I hereby certify that, on this same date, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notifications of such filing to all CM/ECF participants in this case.

/s/ Hermann D. Bauer  
Hermann D. Bauer

**Exhibit A**

Proposed Order

**UNITED STATES DISTRICT COURT  
DISTRICT OF PUERTO RICO**

In re:

THE FINANCIAL OVERSIGHT AND  
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO, *et al.*,

Debtors.<sup>10</sup>

PROMESA

Title III

No. 17 BK 3283-LTS

(Jointly Administered)

In re:

THE FINANCIAL OVERSIGHT AND  
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

PUERTO RICO ELECTRIC POWER AUTHORITY  
("PREPA"),

Debtor.

PROMESA

Title III

No. 17 BK 4780-LTS

**Re: ECF No. [x]**

**This Motion relates to PREPA  
and shall be filed in Lead Case  
No. 17 BK 3283-LTS and Case  
No. 17 BK 4780-LTS.**

**ORDER SCHEDULING DEADLINES AND BRIEFING IN CONNECTION WITH THE  
GOVERNMENT PARTIES' MOTION FOR ORDER ALLOWING ADMINISTRATIVE  
EXPENSE CLAIM FOR AMOUNTS TO BE PAID TO LUMA ENERGY BY  
PREPA DURING INTERIM PERIOD UNDER SUPPLEMENTAL  
AGREEMENT AND THE T&D CONTRACT**

<sup>10</sup> The Debtors in these Title III Cases, along with each Debtor's respective Title III case number and the last four (4) digits of each Debtor's federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico ("Commonwealth") (Bankruptcy Case No. 17-BK-3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation ("COFINA") (Bankruptcy Case No. 17-BK-3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority ("HTA") (Bankruptcy Case No. 17-BK-3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico ("ERS") (Bankruptcy Case No. 17-BK-3566-LTS) (Last Four Digits of Federal Tax ID: 9686); (v) Puerto Rico Electric Power Authority ("PREPA") (Bankruptcy Case No. 17-BK-4780-LTS) (Last Four Digits of Federal Tax ID: 3747); and (vi) Puerto Rico Public Buildings Authority ("PBA") (Bankruptcy Case No. 19-BK-5523-LTS) (Last Four Digits of Federal Tax ID: 3801) (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations).

Upon the *Urgent Motion of the Government Parties Regarding the Scheduling of Deadlines and Briefing in Connection with the Government Parties' Motion for Order Allowing Administrative Expense Claim for Amounts to Be Paid to LUMA Energy By PREPA During Interim Period Under Supplemental Agreement and the T&D Contract* (the "Urgent Motion")<sup>11</sup> and the Court having found it has subject matter jurisdiction over this matter pursuant to section 306(a) of PROMESA; and it appearing that venue in this district is proper pursuant to section 307(a) of PROMESA; and the Court having found that the Debtor provided adequate and appropriate notice of the Urgent Motion under the circumstances and that no other or further notice is required; and upon the record herein, after due deliberation and sufficient cause appearing therefor, IT IS HEREBY ORDERED THAT:

1. The Urgent Motion is **GRANTED** as set forth herein.
2. The following schedule is set for the Administrative Expense Motion:
  - The deadline for parties to file any opposition or response to the Administrative Expense Motion shall be **Monday, April 12, 2021, by 12:00 p.m. (AST)**;
  - The deadline for the Oversight Board and any other party to file a reply to all oppositions and responses shall be **Wednesday, April 21, 2021**.
  - The hearing on the Administrative Expense Motion shall be held on **April 28, 2021**.
3. The Court shall retain jurisdiction to hear and determine all matters arising from implementation of this Order.

Dated: \_\_\_\_\_, 2021.

SO ORDERED:

\_\_\_\_\_  
HONORABLE LAURA TAYLOR SWAIN  
United States District Judge

<sup>11</sup> Capitalized terms not otherwise defined herein shall have the meanings given to them in the Urgent Motion.